

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BOMBARDIER, INC.,)	
)	NO. 2:18-cv-1543-RAJ
Plaintiff,)	
)	
v.)	
)	AEROTEC DEFENDANTS'
MITSUBISHI AIRCRAFT CORPORATION,)	OPPOSITION TO PLAINTIFF'S
MITSUBISHI AIRCRAFT CORPORATION)	MOTION TO SEAL EXHIBITS
AMERICA, INC.; AEROSPACE TESTING)	
ENGINEERING & CERTIFICATION, INC.;)	
MICHEL KORWIN-SZYMANOWSKI;)	Re-noted on Motion Calendar:
LAURUS BASSON; MARC-ANTOINE)	Friday, November 9, 2018
DELARCHE; CINDY DORNÉVAL; KEITH)	
AYRE; and JOHN AND/OR JANE DOES 1-88,)	
)	
Defendants.)	

Defendants Aerospace Testing Engineering & Certification, Inc. ("AeroTEC"), Michel Korwin-Szymanowski, Laurus Basson, and Cindy Dornéval (collectively, the "AeroTEC Defendants"), respectfully file this opposition to Plaintiff Bombardier Inc.'s Motion to Seal Exhibits A-J to the Declaration of Daniel Burns and Exhibit A to the Declaration of David Tidd, filed October 19, 2018, at Ct. Dkt. No. 3 (the "Motion to Seal"). The Motion to Seal should be denied for the following reasons.

First, the Motion to Seal is premature and procedurally deficient, as not all Defendants were timely served. Motions to seal must be noted for consideration no sooner than two Fridays

1 after filing and service. Local Rule 7(d)(2). The summons, complaint, Motion to Seal and other
 2 pleadings and partial motion papers were served on AeroTEC on October 24, 2018. *See* the
 3 Declaration of Service at Ct. Dkt. No. 17. At that time, Plaintiff also purported to serve defendants
 4 Michel Korwin-Szymanowski, Laurus Basson, and Cindy Dornéval (all AeroTEC employees) at
 5 AeroTEC's offices. The Declarations of Service on these individuals all recite that Plaintiff's
 6 process server delivered the pleadings and papers "into the hands of and leaving same with Bradley
 7 Briscoe, Governor for [AeroTEC]." Ct. Dkt. Nos. 18-20. The undersigned is advised that while
 8 Mr. Korwin-Szymanowski authorized Mr. Briscoe to accept service for him, neither Mr. Basson
 9 nor Ms. Dornéval gave Mr. Briscoe authority to accept service on their behalf. In any event, the
 10 undersigned counsel has today appeared for these three individuals, and service of process is now
 11 accepted.

12 Second, Plaintiff's counsel did not attempt to meet and confer with AeroTEC's counsel
 13 prior to filing the Motion to Seal. A motion to seal "must include [a] certification that the party
 14 has met and conferred with all other parties in an attempt to reach agreement on the need to file
 15 the document under seal, to minimize the amount of material filed under seal, and to explore
 16 redaction and other alternatives to filing under seal. Local Rule 5(g)(3)(A). The only exception
 17 in this Court's Standing Order for Civil Cases Assigned to Judge Richard A. Jones (Ct. Dkt. No.
 18 14 at ¶6) is for applications for temporary restraining orders. Although Karr Tuttle Campbell had
 19 not filed a formal notice of appearance at the time the Motion to Seal was filed, Bombardier and
 20 its attorneys have known that AeroTEC was represented by Karr Tuttle Campbell through
 21 correspondence that began back in May 3, 2016. *See* the Declaration of Richard J. Omata, filed
 22 herewith. To date, the parties have still not met and conferred about the Motion to Seal.

23 Third, Plaintiff's counsel has made the sealed exhibits available to AeroTEC's counsel,
 24 and the undersigned reviewed hard copies at Plaintiff's counsel's offices on October 31, 2018.
 25 Plaintiff has refused to allow anyone other than counsel review the documents. Counsel does not
 26 have the necessary experience or expertise in aircraft component design, engineering or
 27 certification to substantively respond, but from counsel's review, it appeared that much of the

1 contents of the sealed documents is not confidential or proprietary, and could be easily redacted
2 rather than sealed in their entirety. *See Foltz v. State Farm Mut. Auto Ins. Co.*, 331 F.3d 1122,
3 1137-38 (9th Cir. 2003) (where documents contain sensitive material only in part, public disclosure
4 of redacted versions may be more appropriate). Pursuant to Local Rule 5(g), there is a “strong
5 presumption of public access to the court’s files” and Plaintiff had the obligation to explore “all
6 alternatives” to filing documents under seal.

7 The individual Defendants have an especially serious need to see the sealed documents. In
8 its proposed Preliminary Injunction Order, Bombardier seeks to enjoin Mr. Basson and Ms.
9 Dornéval from accessing, using or disclosing not only the sealed documents themselves, but
10 broadly and vaguely “any information derived” from the documents, as well as enjoining them
11 from “working in any manner to support the certification or commercialization efforts on the
12 [MRJ] for the duration of these proceedings. *See* Ct. Dkt. No. 4-1. It is imperative that these
13 individuals have access to the sealed documents so they can understand what they contain,
14 challenge the “confidential” nature of any specific information they contain, understand the scope
15 of any restraints that may be imposed, and protect their careers and livelihood.

16 This Court should deny the Motion to Seal at this time, or at a minimum defer ruling until
17 the sealed documents have been served on the parties so they can review the documents and retain
18 the necessary experts or professionals to properly evaluate Plaintiff’s claims as to confidential
19 nature of the information contained in the sealed documents. The limited review counsel was
20 allowed in the office of Bombardier’s counsel is insufficient for the AeroTEC Defendants to
21 substantively respond to the Motion to Seal in any meaningful way. This will also allow the parties
22 to properly meet and confer and discuss less restrictive alternatives. In addition, the AeroTEC
23 Defendants request that any order granting Plaintiff’s Motion to Seal should provide that it is
24 without prejudice as to any Defendant’s right to seek to have all or part of any sealed documents
25 to be unsealed.

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1 Dated this 7th day of November, 2018.

2 **KARR TUTTLE CAMPBELL**
3 *Attorneys for Defendants Aerospace Testing*
4 *Engineering & Certification Inc., Michel Korwin-*
Szymanowski, Laurus Basson, and Cindy Dornéval

5 /s/ Mark A. Bailey

6 Mark A. Bailey, WSBA# 26337

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CERTIFICATE OF SERVICE

I, Sherelyn Anderson, affirm and state that I am employed by Karr Tuttle Campbell in King County, in the State of Washington. I am over the age of 18 and not a party to the within action. My business address is: 701 Fifth Avenue, Suite 3300, Seattle, WA 98101. On this day, I electronically filed the foregoing AeroTEC Defendants' Opposition to Plaintiff's Motion to Seal Exhibits with the Clerk of the Court and caused it to be served upon the below counsel of record using the CM/ECF system.

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 Corporation America, Inc.*

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, to the best of my knowledge.

Dated this 7th day of November, 2018, at Seattle, Washington.

/s/ Sherelyn Anderson

Sherelyn Anderson
 Legal Assistant